HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 652 OF 2006

Shiv Shankar Yadav,
S/o Sri Bhagwan Deen Yadav,
R/o Pathak Niwas, Gandhi Colony,
Bhowali, District- Nainital. .....Applicant.

Vs.

1. State of Uttaranchal.
2. Station House Officer of P.S. Bhowali, District- Nainital.
3. Manish Negi, S/o Kushal Singh Negi, R/o Bhowali, District- Naintial.
4. Sub Divisional Magistrate, Nainital.

.....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri S.S. Yadav in person and A.G.A. for the State Mr. S.P.S. Panwar, Sr. Advocate, has assisted the Court. None appears for the respondent no. 3 in spite of the service.

2. By the present application, the applicant has prayed for quashing the order/ notice dated 29.07.2006 and also proceedings under Section 107/116 of the Code of Criminal Procedure initiated against him at Police Station Bhowali, District- Nainital.

3. Briefly stated, according to the applicant, he has purchased the property situated in Ward No. 3 Gandhi Colony of 303 Sq. Mt. in which construction has already

been made in area 81X32 sq.mt. on the ground floor, first floor, 2nd floor and 3 floor. The sale deed was executed on 22nd August, 2005 for a sum of Rs. 5,00,000/-. The applicant got this name mutated in the municipal record.

4. The grievance of the petitioner is that after purchasing the said property, he has sent a notice under Section 106 of the Transfer of Property Act to the respondent no. 3 for payment of rent, but not a single penny has been paid to him by him. Mother of the respondent no. 3 and the respondent no. 3 both are residing on the 3rd floor of the premises and they are tenants of the accommodation of a room 13 x 10 feet toward eastern side.

5. On 24th July, 2006, the applicant has given an application to the Deputy Collector, Sadar, Nainital. He inspected the premises. The application was simply given to the Thana Adhyaksha Bhawali, Nainital stating therein that the respondent no. 3 and his mother are interfering with the construction work of the applicant and as such the police authorities were requested in this regard not to interfere in the construction work of the applicant.

6. The applicant has submitted that to the utter surprise in collusion with the respondent no. 3 and his mother, the proceedings under Sections 107/116 Code of Criminal of Procedure have been initiated thereby directing the applicant to file the reply in this regard.

7. The grievance of the applicant is that it is not a case of 107/116 of the Code of Criminal Procedure, but it

is a simple complaint to the Police Officer for taking steps to stop the respondents from interfering with the construction works.

8. Section 107 and 116 of the Code of Criminal Procedure reads as under:-

> ***"107. Security for keeping the peace in other cases.–****(1) When an Executive Magistrate receives information that any person is likely to commit a breach of peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond [with or without sureties] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.*
>
> *(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.*
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> *116. Inquiry as to truth of information – (1) When an order under section 111 has been*

read or explained under section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons cases.

(3) After the commencement, and before the completion, of an inquiry under sub-section (1), thue Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded.

Provided that-

(a) no person against whom proceedings are not being taken under section 108, Section

109, or section 110 shall be directed to execute a bond for maintaining good behaviour.

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent their liability, shall not be more onerous than those specified in the order under section 111.

(4) For the purposes of this section the fact that a person is a habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt within the same or separate inquiries as the Magistrate shall think just.

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminate unless, for special reasons to be recorded in writing the Magistrate otherwise directs;

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions

Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse."

9. After considering the arguments of the applicant and reading the challani report, it does not appear that requirement of Section 107/116 of the Code of Criminal Procedure are available so as to pass the impugned order.

10. Further the Magistrate is required to follow the procedure as laid down under Section 111 of the Code of Criminal Procedure. Section 111 is quoted below:

> ***"111. Order to be made.*** *– When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, sitting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required."*

11. In view of the aforesaid, direction to the applicant to furnish the security bond is wholly illegal. There is no reason for directing the applicant to submit security any. It is a case where the police authorities instead of taking action on the complaint of the applicant has shifted the burden on the complainant himself by taking the Muchalka of Rs. 25,000/- and a routine order has been passed without looking to the averments of the complaint.

12. Police Authorities are meant for keeping peace and security, they are not meant to pass in a prescribed proforma.

11. It is really painful that the complaint of the applicant has not yet been attended with regard to the stoppage of the construction work. I hope and trust that police authorities will take suitable action on the complaint of the applicant.

12. In view of the above, order passed under Section 106/117 of the Code of Criminal Procedure is liable to be quashed along with the notice issued to the applicant on 24th July, 2006.

13. Respondents are directed to look into the grievances of the applicant on the basis of the complaint made to the Police Authorities dated 21.07.2006.

14. Consequently, application filed under Section 482 of the Code of Criminal Procedure is allowed.

Rajesh Tandon, J.

16.12.2006
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